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CONFIDENTIAL SECTION 01 OF 03 TRIPOLI 000474

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DEPARTMENT FOR NEA/MAG AND EUR

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SUBJECT: LIBYA: MEDICS DEFAMATION CASE DECISION DUE MAY 27, SUPREME COURT APPEAL DECISION LIKELY TO BE DELAYED

REF: TRIPOLI 426

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REASON: 1.4 (b), (d)

¶1. (C) SUMMARY. All signs indicate the six foreign health workers accused of intentionally infecting over 400 Benghazi children with HIV/AIDS in 1999 will be convicted on May 27 of defaming two Libyan police officers they accused of torture (a separate case from the main criminal case). The Bulgarian Embassy reports that since the Supreme Court has yet to schedule a first hearing of the medics' appeal to their December 19, 2006 conviction in the criminal case, a Supreme Court verdict is still at least seven weeks away. (Libyan officials had originally predicted a Supreme Court decision by March.) The Bulgarian Embassy is cautiously optimistic that the Supreme Court delay coincided with a high-level May 10 EU meeting aimed at finding a political way for the medics to return home. The prosecution prepared a case file for Supreme Court review recommending the higher court confirm the guilty verdict, raise the court-ordered compensation for the victims' families, and order a new trial in the secondary charges of money laundering and alcohol consumption. Once the Supreme Court sets a date to hear the appeal, it can confirm or overturn the verdict or order a new criminal trial heard directly by the Supreme Court. Inflammatory press coverage continues and rose to a new level on May 9 when the GOL circulated a diplomatic note to foreign missions claiming that a Mossad agent developed a romantic relationship with one of the nurses and paid her to infect the children. END SUMMARY.

DEFAMATION VERDICT DELAYED UNTIL MAY 27

¶2. (C) Dmitar Dmitrov, point man on the nurses case for the Bulgarian Embassy in Tripoli told Poloff that Bulgaria expects a guilty verdict in the defamation case on May 27. (NOTE: This case is separate from the main criminal case against the medics.) Since two Libyan police officers filed suit in the Souq al-Juma'a municipal court in Tripoli on February 11 alleging that the medics intentionally made false statements accusing the officers of torture, the court has held seven hearings in the defamation case. All hearings have taken place at the maximum security Ayn Zara prison. (NOTE: The prison houses almost exclusively political prisoners. END NOTE.) At the latest May 6 hearing, the municipal court judge announced the court would delay its verdict on the defamation charges

until May 27.

¶3. (C) While Bulgaria believes the police officers are at least partially concerned about their reputation, financial motives also underlie the defamation case. In addition, state prosecutors have successfully used the defamation case to introduce new evidence into the ongoing criminal trial; specifically, prosecutors have introduced a "Biotechnology Center of South Carolina" study reported reftel as new evidence of the medics' guilt in the criminal case.

¶4. (C) The five Bulgarian medics and Palestinian physician attended the first five defamation hearings; however, the medics were not provided with interpretation and were not allowed to address the court. At one point, the plaintiff's attorney asked the medics if they had intentionally lied that their confessions were obtained under torture. Several medics attempted to respond, but the judge quickly cut them off. Though the medics' defense attorney Othman Bizanti believes Libyan law requires the defendants to be present during a civil trial for the verdict to be valid, the court did not object to the medics' decision not to attend the last two hearings.

SUPREME COURT RULING AT LEAST SEVEN WEEKS AWAY

¶5. (C) According to Dmitrov, the Supreme Court ruling in the criminal case is at least seven weeks away. According to Libyan law, the prosecution must prepare a dossier for the Supreme Court containing arguments and evidence from the criminal trial, including statements from the prosecution, victims' families, and defendants. Once the prosecution completes the dossier, the Supreme Court will fix a date for a first hearing approximately three weeks later. During the hearing, lawyers for the prosecution, victims' families, and defendants will give oral arguments summarizing their cases but will not be allowed to present new evidence or call witnesses. The Supreme Court will

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then adjourn for four weeks to review the case.

¶6. (C) The Supreme Court can then accept the prosecution's recommendation and uphold the conviction, grant the medics' appeal and throw out the case, or order a new criminal trial at the Supreme Court level if it has any doubts about the prosecution's position. If the Supreme Court orders a new criminal trial, the Supreme Court would hear all the evidence and witnesses again, likely delaying the verdict for months. The Supreme Court does not have the legal authority to remand the case to a lower court.

¶7. (C) Dmitrov told Poloff the prosecution finished its dossier on April 15. The dossier contains the prosecution's recommendations to confirm the guilty verdict in the criminal case, increase the compensation figures to the victims' families noted in the December 19 verdict, and order a new trial on the secondary charges of money laundering and alcohol consumption. Almost a month has passed since the prosecution forwarded its document to the Supreme Court without the Court scheduling a hearing. Bulgaria sees the Supreme Court's delay as a positive sign that the GOL is waiting to see the outcome of ongoing high-level EU diplomatic efforts.

SUPREME COURT COULD RAISE COURT-ORDERED COMPENSATION PAYMENTS

¶8. (C) There are still two possible mechanisms for the victims' families to receive compensation -- a court-ordered judgment or an out-of-court settlement directly with the medics. The first option would see the Supreme Court, assuming it confirms the guilty verdict, either affirm or raise the compensation figures spelled out in the December 19 ruling. (NOTE: In its recommendation to the Supreme Court, which has not been made public, the prosecution recommends the Supreme Court revise upwards. END NOTE.) An out-of-court settlement between the defendants and the victims' families is also still possible. According to defense lawyer Othman Bizanti, Libyan criminal law allows for a "blood money" payment to reduce the

medics' sentence from death to life in prison. The defendants' lawyer believes the law does not/not allow the medics to go free in exchange for blood money.

¶19. (C) According to Dmitrov, the criminal court's December 19 verdict specified compensation figures for 348 families, ranging from 350,000 LD to almost 1 million LD. Dmitrov estimates the total cost of the December 19 compensation package at 104 million LD -- a "reasonable figure" for Bulgaria and the EU to manage (i.e. via the Benghazi International Fund). While victims' families have at various points agreed to abide by court decisions on compensation, most families continue to campaign publicly for a larger settlement. They frequently cite the \$10 million phased settlement to Lockerbie victims' families, although local press does not circulate information that the final tranche of the settlement was not paid when Libya was not removed from the State Sponsors of Terrorism List by the specified date.

BULGARIA UPBEAT ON EU DIPLOMATIC EFFORTS

¶10. (C) Bulgaria continues to hope for sustained, high-level EU pressure throughout the Supreme Court process. Dmitrov noted cautious optimism that the Supreme Court's refusal to set a date for its first hearing coincided with high-level talks sponsored by the EU Commission for External Relations on May 10. While the Bulgarian Embassy in Tripoli had no information about the specifics of the EU-led discussions, Bulgaria remains hopeful EU diplomatic efforts will find a political solution independent of the Supreme Court procedure. Nevertheless, Dmitrov noted constant GOL indignation over allegations its judiciary is not fully independent, therefore suggesting the Supreme Court will likely proceed with a hearing irrespective of European progress on the political front. In addition, Dmitrov noted the EU resident representative in Tunis and the UK Ambassador in Tripoli (acting on behalf of the UK's EU Presidency) visited the medics in prison on May 6 in a quiet show of support. (NOTE: The UK Ambassador in Tripoli also attended the May 10 Brussels meeting. END NOTE.)

INFLAMMATORY PRESS COVERAGE GAINS NEW LEGITIMACY

¶11. (C) As reported reftel, inflammatory press coverage of the medics trial continues, linking the case with a foreign intelligence plot against Libya and threatening that anyone who questions the integrity of the Libyan judicial process shares

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the medics' guilt. Widely circulated conspiracy theories gained new legitimacy on May 9 when the GOL distributed a particularly vitriolic article to foreign Embassies under cover of a diplomatic note. The article, reportedly from the "Al Madar" weekly newspaper, alleges that Bulgarian intelligence services and Mossad collaborated to seduce one of the medics in an unnamed Mediterranean capital "not far from Libya." The article says that a Mossad agent developed a romantic relationship with the medic and paid her to infect the Benghazi children.

¶12. (C) According to the dipnote, "Al Madar" is a weekly Iraqi newspaper operating under British license but distributed in Syria. Ali Al Jafal, a "Shiite Iraqi," is listed at the newspaper's editor, while Syrian journalist Moeen Ibrahim is the managing editor. The dipnote also mentions two other names: "Mohamed al Miah, Shiite, he was formerly the Editorial Manager of the Iraqi Revolution Newspaper during Saddam Hussein era, and Abdul Mohsin Attiah, an Iraqi Journalist, Shiite." The note also states that the newspaper is "supportive to the Iraqi resistance."

BULGARIAN EMBASSY STRATEGY FOR DIPLOMATIC ENGAGEMENT

¶13. (C) Dmitrov advised that any visible U.S. role in the last weeks of the defamation case, including attendance at the May 27 verdict, would only allow the GOL to spin U.S. presence to bolster the trial's legitimacy. The Bulgarian Embassy expects the GOL might bus the diplomatic corps to the Supreme Court

verdict as it did with the December 19 verdict announcement. Bulgaria said that the EU Ambassadors were supporting its efforts and noted UK Ambassador's May 6 visit official prison visit to the medics. Dmitrov asked for the U.S. to continue raising the medics case as part of its bilateral engagements with Libya.

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